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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Appellant:	John R. Burgeson
Serial No.:	10/790,271
Filed:	March 1, 2004
For:	TEMPERATURE ACTIVATED SCENT WICK
Examiner:	Christopher S. Kim
Art Unit:	3762
Confirmation No.:	9536
Attorney:	Gerald E. Helget
Attorney Docket No.:	33075.71
Additional Fees:	Charge to Deposit Account 023732

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

TRANSMITTAL COVER LETTER

Enclosed for filing please find the following:

1. Appellant's Appeal Brief Under 37 C.F.R. § 41.37 (16 pgs.);
2. Check in the amount of $250.00; and
3. Postcard receipt.

Respectfully submitted,

Dated: 2 May 06

By _____
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Date 2 May 06

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Sir:

APPELLANT'S APPEAL BRIEF UNDER 37 C.F.R. § 41.37

Appellant, by his attorney, submits one copy of this Appeal Brief, pursuant to 37 C.F.R. § 41.37 in further of the Appeal, the notice of which was filed with the United States Patent and Trademark Office on March 2, 2006, from the Final Rejection of claims 1, 2, 4, 5 and 8-12 of the above-identified application, as set forth in the Final Office Action mailed on December 12, 2005. Appellant respectfully requests consideration and reversal of the Examiner's rejections of the pending claims.

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By _____
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I. REAL PARTY IN INTEREST

The real party in interest is John R. Burgeson.

II. RELATED APPEALS AND INTERFERENCES

Applicant is unaware of any related appeals or interferences that may have a bearing on the Board's decision in the present appeal.

III. STATUS OF CLAIMS

The present application was filed on March 1, 2004 with claims 1-16. A non-final Office Action was mailed June 10, 2005. A Final Office Action was mailed December 2, 2005. Claims 1, 2, 4, 5, and 8-12 stand twice rejected, remain pending, and are the subject of the present Appeal.

IV. STATUS OF AMENDMENTS

No amendments have been made since the Final Office Action.

V. SUMMARY OF CLAIMED SUBJECT MATTER

A temperature activated scent wick (10, page 5, Fig. 1) for dispersion into the air above the ground of an animal attractant scent for use by hunters to take advantage of the mating process of certain species to be hunted, such as white tail deer, the wick comprising:

a) a container (12, page 5, Fig. 1) made of substantially rigid material so as to resist atmospheric pressure affects having an interior volume (14) for holding a volume of scent (16) and a volume of air, the container adapted for suspension above the ground;

b) a cap (23, page 5, Fig. 1) for sealing the container;

c) a temperature buffering scent reservoir (22, page 5, Fig. 1) passing through the cap with an interior intake end (32, page 5, Fig. 1) in flow communication with the interior scent volume and an exterior release end (34, page 5, Fig. 1); and

d) an absorbent scent wick (45, page 5, Fig. 1)) securable about the temperature buffering scent reservoir exterior release end wherein an increase in ambient temperature associated with morning and afternoon will result in the interior volume of air expanding to force the scent to pass through the temperature buffering scent reservoir on to the wick and a decrease in ambient temperature associated with later day will result in stopping the scent from passing through the reservoir as to conserve the scent.

A temperature activated scent wick (10, page 5, Fig. 1) for dispersion into the air above the ground of an animal attractant scent for use by hunters to take advantage of the mating process of certain species to be hunted, such as white tail deer, the wick comprising:

a) a container (12, page 5, Fig. 1) made of substantially rigid material so as to resist atmospheric pressure affects having an interior volume (14, page 5, Fig. 1) for holding a volume of scent (16, page 5, Fig. 1) and a substantially equal or greater volume of air, the container adapted for suspension above the ground with a downwardly directed opening;

b) a cap (23, page 5, Fig. 1) for sealing the opening of the container;

c) a temperature buffering scent reservoir (22, page 5, Fig. 1) passing through the cap with an interior intake end (32, page 5, Fig. 1)in flow communication with the interior scent volume and an exterior release end (34, page 5, Fig. 1); and

d) an absorbent scent wick (45, page 5, Fig. 1) securable about but apart from the exterior release end wherein an increase in ambient temperature associated with morning and afternoon will result in the interior volume of air expanding to force the scent to pass through the temperature buffering scent reservoir out through the reservoir exterior release end onto the wick, and a decrease in ambient temperature associated with later day will result in stopping the scent from passing through the reservoir release end as to conserve the scent.

A temperature activated scent wick (10, page 5, Fig. 1) for dispersion into the air above the ground of an animal attractant scent for use by hunters to take advantage of the mating process of certain species to be hunted, such as white tail deer, the wick comprising:

a) a container (12, page 5, Fig. 1) adapted to be suspendable above the ground from a tree made of substantially rigid material so as to resist atmospheric pressure affects having an interior volume (14, page 5, Fig. 1) for holding a volume of scent (16, page 5, Fig. 1) and a substantially equal or greater volume of air, the container adapted for suspension above the ground;

b) a cap (52, page 8, Fig. 2)) for sealing the container;

c) a temperature buffering scent reservoir (50, page 8, Fig. 2)) comprising a tube (54, page 8, Fig. 2) of small diameter passing through the cap with an interior intake end (55, page 8, Fig. 2) in flow communication with the interior scent volume and an exterior release end (57, page 5, Fig. 2); and

d) an absorbent scent wick (63, page 8, Fig. 2) securable about the temperature buffering scent reservoir exterior release end wherein an increase in ambient temperature associated with morning and afternoon will result in the interior volume of air expanding to force the scent to pass through the temperature buffering scent reservoir on to the wick and a decrease in ambient temperature associated with later day will result in stopping the scent from passing out through the reservoir as to conserve the scent but rather will draw the scent from the tube with air bubbles into the container.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1, 2, 4, 5, and 8-12 were rejected as anticipated under 35 U.S.C. § 102(b) by Fuld.

Claims 1, 2, 4, 5, and 8-12 were rejected as anticipated under 35 U.S.C. § 102(b) by Bundy.

Claims 1, 2, 4, 5, and 8-12 were rejected as anticipated under 35 U.S.C. § 102(b) by Ohayon.

VIII. ARGUMENT

A. Claims 1, 2,4,5 and 8-12 are not anticipated by Fuld.

A single prior art reference anticipates a claimed invention only if it discloses each and every claim element.[1]

Fuld does not disclose a temperature buffering scent reservoir wherein an increase in ambient temperature associated with morning and afternoon will result in the interior volume of air expanding to force the scent to pass through the temperature buffering scent reservoir on to the wick and a decrease in ambient temperature associated with later day will result in stopping the scent from passing through the reservoir as to conserve the scent.

One embodiment of Fuld operates by the principle of valve 64 opening when the valve stem 66 and retainer 68 strike the bottom of the pan. There is no disclosure of the scent reservoir being buffered by temperature as discussed in the Specification at page 9. In fact, Fuld could not be temperature-buffered as the valve 64 would prevent such an operation. In Fig. 2, the retainer 68 of the valve 64 is pressed against the bottom of the pan 52. The valve 64 will therefore be unresponsive to pressure changes within the container 56. Instead, the volume of liquid in the pan 52 is controlled by the liquid level reaching the spout 62. (Page 2, col. 1, lines 24-31) by gravity feed.

Another embodiment in Fuld (Fig. 6) replaces the valve 64 with a wick 84. However, this embodiment is inoperative because of the overflow tube 74. As soon as the volume of liquid in the pan 52 falls below the upper entrance of the tube 74, the pan 52 will be exposed

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[1] *Structural Rubber Prod. Co. v. Park Rubber Co.*, 749 F.2d 707, 223 USPQ 1264 (Fed. Cir. 1984)

to ambient air pressure. There will therefore be no pressure differential between the container 56 and the pan 52, and as a result the apparatus will be unresponsive to temperature changes. Furthermore, it is likely that the wick 84 would not respond to any pressure differential that exists between the container 56 and the pan 52. That is, liquid would probably flow in the wick regardless of such pressure differential.

Claims 1, 2, 4, 5 and 8-12 are therefore allowable.

1. Separate argument as to claim 4.

The Examiner has not shown where Fuld discloses the reservoir comprising a tube of diameter as to hold the scent within the reservoir with surface tension.

2. Separate argument as to claim 5.

The Examiner has not shown where Fuld discloses the reservoir comprising a tube with up and down angles as to hold the scent within the reservoir.

3. Separate argument as to claim 8.

The Examiner has not shown where Fuld discloses a temperature buffering scent reservoir passing through the cap. In Fuld, the cap is designated as reference numeral 60. The pan 52 does not pass through the cap 60.

4. Separate argument as to claim 9.

The Examiner has not shown where Fuld discloses the reservoir comprising a tube of diameter as to hold the scent within the reservoir with surface tension.

5. Separate argument as to claim 10.

The Examiner has not shown where Fuld discloses where decrease in ambient temperature will draw the scent from the tube and housing with air back into the container.

6. Separate argument as to claim 11.

The Examiner has not shown where Fuld discloses a temperature buffering scent reservoir comprising a tube of small diameter passing through the cap. The Examiner has also not shown where Fuld discloses a decrease in ambient temperature associated with later day will result in stopping the scent from passing out through the reservoir as to conserve the scent but rather will draw the scent from the tube with air bubbles into the container.

7. Separate argument as to claim 12.

The Examiner has not shown where Fuld discloses the reservoir comprising a tube with up and down angles as to hold the scent within the reservoir and further containing the limitations of claim 11.

B. Claims 1, 2,4,5 and 8-12 are not anticipated by Bundy.

Bundy does not disclose a temperature buffering scent reservoir wherein an increase in ambient temperature associated with morning and afternoon will result in the interior volume of air expanding to force the scent to pass through the temperature buffering scent reservoir on to the wick and a decrease in ambient temperature associated with later day will result in stopping the scent from passing through the reservoir as to conserve the scent. Bundy operates to dispense scent by the user squeezing the container. There is no disclosure of the scent reservoir being buffered by temperature as discussed in the Specification at page 9.

Furthermore, Bundy would not respond to ambient temperature changes to regulate the flow of scent as claimed. The only embodiment disclosed in Bundy is a squeeze bottle D which is made of a flexible plastic material. Col. 3 lines 46-49. The walls of the container D are thus not rigid as described in the Specification of Applicant's application, page 6, last paragraph. Accordingly, changes in temperature may be offset by any change in atmospheric pressure. For example, if ambient temperature decreases but ambient pressure increases, the flow of liquid may not stop. On the other hand, if ambient temperature increases but ambient pressure decreases, the flow of liquid may not start.

The device is thus not operational as claimed by Applicant.

Claims 1, 2, 4, 5 and 8-12 are therefore allowable.

1. Separate argument as to claim 4.

The Examiner has not shown where Bundy discloses the reservoir comprising a tube of diameter as to hold the scent within the reservoir with surface tension.

2. Separate argument as to claim 5.

The Examiner has not shown where Bundy discloses the reservoir comprising a tube with up and down angles as to hold the scent within the reservoir.

3. Separate argument as to claim 8.

The Examiner has not shown where Bundy discloses a temperature buffering scent reservoir passing through the cap.

4. Separate argument as to claim 9.

The Examiner has not shown where Bundy discloses the reservoir comprising a tube of diameter as to hold the scent within the reservoir with surface tension.

5. Separate argument as to claim 10.

The Examiner has not shown where Bundy discloses where decrease in ambient temperature will draw the scent from the tube and housing with air back into the container.

6. Separate argument as to claim 11.

The Examiner has not shown where Bundy discloses a temperature buffering scent reservoir comprising a tube of small diameter passing through the cap. The Examiner has also not shown where Fuld discloses a decrease in ambient temperature associated with later day will result in stopping the scent from passing out through the reservoir as to conserve the scent but rather will draw the scent from the tube with air bubbles into the container.

7. Separate argument as to claim 12.

The Examiner has not shown where Bundy discloses the reservoir comprising a tube with up and down angles as to hold the scent within the reservoir and further containing the limitations of claim 11.

C. Claims 1, 2,4,5 and 8-12 are not anticipated by Ohayon.

Ohayon does not disclose a temperature buffering scent reservoir wherein an increase in ambient temperature associated with morning and afternoon will result in the interior volume of air expanding to force the scent to pass through the temperature buffering scent reservoir on to the wick and a decrease in ambient temperature associated with later day will result in stopping the scent from passing through the reservoir as to conserve the scent. Ohayon dispenses scent through a valve. There is no disclosure of the scent reservoir being buffered by temperature as discussed in the Specification at page 9. In fact, Ohayon could not be temperature-buffered as the valve would prevent such an operation.

Claims 1, 2, 4, 5 and 8-12 are therefore allowable.

1. Separate argument as to claim 4.

The Examiner has not shown where Ohayon discloses the reservoir comprising a tube of diameter as to hold the scent within the reservoir with surface tension.

2. Separate argument as to claim 5.

The Examiner has not shown where Ohayon discloses the reservoir comprising a tube with up and down angles as to hold the scent within the reservoir.

3. Separate argument as to claim 8.

The Examiner has not shown where Ohyon discloses a temperature buffering scent reservoir passing through the cap.

4. Separate argument as to claim 9.

The Examiner has not shown where Ohayon discloses the reservoir comprising a tube of diameter as to hold the scent within the reservoir with surface tension.

5. Separate argument as to claim 10.

The Examiner has not shown where Ohayon discloses where decrease in ambient temperature will draw the scent from the tube and housing with air back into the container.

6. Separate argument as to claim 11.

The Examiner has not shown where Ohayon discloses a temperature buffering scent reservoir comprising a tube of small diameter passing through the cap. The Examiner has also not shown where Ohayon discloses a decrease in ambient temperature associated with later day will result in stopping the scent from passing out through the reservoir as to conserve the scent but rather will draw the scent from the tube with air bubbles into the container.

7. Separate argument as to claim 12.

The Examiner has not shown where Ohayon discloses the reservoir comprising a tube with up and down angles as to hold the scent within the reservoir and further containing the limitations of claim 11.

D. Response to Examiner's Response to Arguments

1. Applicant has shown that both embodiments of Fuld do not anticipate the claims.

2. Applicant has shown that Bundy and Ohayon are not operational as claimed by Applicant.

In view of the foregoing, Appellant asks the Board to overturn the Examiner's rejections and allow all claims.

Respectfully submitted,

Dated: 2 May 06

By _____
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CLAIMS APPENDIX

The claims on appeal:

1. (rejected) A temperature activated scent wick for dispersion into the air above the ground of an animal attractant scent for use by hunters to take advantage of the mating process of certain species to be hunted, the wick comprising:

a) a container made of substantially rigid material so as to resist atmospheric pressure affects having an interior volume for holding a volume of scent and a volume of air, the container adapted for suspension above the ground;

b) a cap for sealing the container;

c) a temperature buffering scent reservoir passing through the cap with an interior intake end in flow communication with the interior scent volume and an exterior release end; and

d) an absorbent scent wick securable about the temperature buffering scent reservoir exterior release end wherein an increase in ambient temperature associated with morning and afternoon will result in the interior volume of air expanding to force the scent to pass through the temperature buffering scent reservoir on to the wick and a decrease in ambient temperature associated with later day will result in stopping the scent from passing through the reservoir as to conserve the scent.

2. (rejected) The wick of claim 1, wherein the wick does not touch the exterior release end.

3. (withdrawn) The wick of claim 1, wherein the reservoir comprising a tube with the interior intake end inside the cap and the exterior release end outside the cap with a reservoir housing with an aperture therethrough securable to the cap about the exterior release end and the scent wick securable to the reservoir housing above the aperture.

4. (rejected) The wick of claim 1, wherein the reservoir comprises a tube of diameter as to hold the scent within the reservoir with surface tension.

5. (rejected) The wick of claim 1, wherein the reservoir comprises a tube with up and down angles as to hold the scent within the reservoir.

6. (withdrawn) The wick of claim 1, wherein the reservoir comprises a tube extending toward the bottom of the container and up through the cap.

7. (withdrawn) The wick of claim 1, further comprising a closure for the exterior release end of the reservoir.

8. (rejected) A temperature activated scent wick for dispersion into the air above the ground of an animal attractant scent for use by hunters to take advantage of the mating process of certain species to be hunted, the wick comprising:

a) a container made of substantially rigid material so as to resist atmospheric pressure affects having an interior volume for holding a volume of scent and a substantially equal or greater volume of air, the container adapted for suspension above the ground with a downwardly directed opening;

b) a cap for sealing the opening of the container;

c) a temperature buffering scent reservoir passing through the cap with an interior intake end in flow communication with the interior scent volume and an exterior release end; and

d) an absorbent scent wick securable about but apart from the exterior release end wherein an increase in ambient temperature associated with morning and afternoon will result in the interior volume of air expanding to force the scent to pass through the temperature buffering scent reservoir out through the reservoir exterior release end onto the wick, and a decrease in ambient temperature associated with later day will result in stopping the scent from passing through the reservoir release end as to conserve the scent.

9. (rejected) The wick of claim 7, wherein the reservoir comprises a tube of diameter as to hold the scent within the reservoir with surface tension.

10. (rejected) The wick of claim 7, wherein the decrease in ambient temperature will draw the scent from the tube and housing with air back into the container.

11. (rejected) A temperature activated scent wick for dispersion into the air above the ground of an animal attractant scent for use by hunters to take advantage of the mating process of certain species to be hunted, the wick comprising:

a) a container adapted to be suspendable above the ground from a tree made of substantially rigid material so as to resist atmospheric pressure affects having an interior volume for holding a volume of scent and a substantially equal or greater volume of air, the container adapted for suspension above the ground;

b) a cap for sealing the container;

c) a temperature buffering scent reservoir comprising a tube of small diameter passing through the cap with an interior intake end in flow communication with the interior scent volume and an exterior release end; and

d) an absorbent scent wick securable about the temperature buffering scent reservoir exterior release end wherein an increase in ambient temperature associated with morning and afternoon will result in the interior volume of air expanding to force the scent to pass through the temperature buffering scent reservoir on to the wick and a decrease in ambient temperature associated with later day will result in stopping the scent from passing out through the reservoir as to conserve the scent but rather will draw the scent from the tube with air bubbles into the container.

12. (rejected) The wick of claim 11, wherein the tube has up and down angles as to hold the scent within the reservoir

13. (withdrawn) The wick of claim 11, wherein the tube extends toward the bottom of the container and up through the cap.

14. (withdrawn) A temperature activated scent wick for dispersion into the air above the ground of an animal attractant scent for use by hunters to take advantage of the mating process of certain species to be hunted, such as white tail deer, the wick comprising:

a) a container made of substantially rigid material so as to resist atmospheric pressure affects having an interior volume for holding a volume of scent and substantially equal or greater volume of air, the container adapted for suspension above the ground;

b) a cap for sealing the container;

c) a temperature buffering scent reservoir comprises a rube passing through the cap with an interior intake end in flow communication with the interior scent volume and an exterior release end with up and down angles; and

d) an absorbent scent wick securable to the cap, about and apart from the temperature buffering scent reservoir exterior release end wherein an increase in ambient temperature associated with morning and afternoon will result in the interior volume of air expanding to force the scent to pass through the temperature buffering scent reservoir on to the wick and a decrease in ambient temperature associated with later day will result in stopping the scent from passing through the reservoir as to conserve the scent.

15. (withdrawn) The wick of claim 14, wherein the container is adapted to be suspendable above the ground from a tree.

16. (withdrawn) The wick of claim 11, wherein the tube extends toward the bottom of the container and up through the cap

EVIDENCE APPENDIX

None.

RELATED PROCEEDINGS APPENDIX

None.